



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1996

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health
and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR96-2324

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 40601.

The Texas Department of Mental Health and Mental Retardation ("TDMHMR") received a request for information regarding electroconvulsive therapy. On the basis of an earlier decision from this office, OR95-1617, TDMHMR released several documents responsive to the request, but maintains the remaining documents are deemed confidential by law under section 552.101. Specifically, TDMHMR is concerned that some of the requested information is confidential under sections 576.005(a) and 611.002(a) of the Health and Safety Code, and that additionally, release would violate the constitutional and common law privacy rights of the clients served by TDMHMR.

Section 552.101 excepts from disclosure information that is confidential by another source of law. Section 611.002 provides in part:

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.
- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045

The records submitted labeled "Exhibit D" consist of a letter from a physician describing a patient's condition and course of treatment over time, and a document labeled "History and Progress Notes" developed by a physician which describes a patient's condition and

suggested treatment. "Exhibit E," signed by a physician, is titled "Second Opinion Regarding Continuation of Electroconvulsive Therapy" and describes a patient's medical history and a suggested course of treatment. "Exhibit M" is a letter from a physician describing a patient's physical condition over time and the medical circumstances leading to the patient's death. Although these documents do not identify the patients' names, they are clearly records of the diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional.¹ They are therefore within the scope of section 611.002, and the department can only disclose the records "to the extent that disclosure is consistent with the authorized purposes for which the [department] obtained the information." Health & Safety Code § 611.004(d).²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 40601

Enclosures: Submitted documents

cc: Richard LaVallo
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(w/o enclosures)

¹Section 611.001 of the Health and Safety Code defines "professional" to include "a person authorized to practice medicine in any state or nation" and "a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder."

²As we resolve this matter under section 552.101 and Health and Safety Code section 611.002, we need not address your arguments under Health and Safety Code section 576.005(a) or under common law or constitutional privacy.